

25 Am. Jur. 2d Duress and Undue Influence § 26

American Jurisprudence, Second Edition | May 2021 Update

Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

D. Effect

§ 26. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(1)

Forms

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence § 4](#) (Complaint, petition, or declaration—To declare deed null and void—Deed obtained by duress)

Duress vitiates consent to a contract¹ and therefore generally renders a contract or conveyance voidable, rather than void, at the option of the victim.² Thus, the contract can be ratified³ and is valid until it is avoided by the person entitled to avoid it.⁴ However, duress in the form of physical compulsion, in which a party is caused to appear to assent when he or she has no intention of doing so, renders the resulting purported contract void.⁵

Duress is a defense to a contract claim.⁶ An instrument procured by duress is subject to judicial cancellation,⁷ and one making a compromise as a result of duress may have it invalidated.⁸ Also, money paid under duress may generally be recovered,⁹ and a recipient of money paid under duress is a constructive trustee.¹⁰

Under the voluntary payment doctrine, a payment that is made under duress is not voluntary and may be recovered.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Reimonenq v. Foti](#), 72 F.3d 472 (5th Cir. 1996) (applying Louisiana law); [Degenhardt v. Dillon Co.](#), 543 Pa. 146, 669 A.2d 946 (1996); [Kendrick v. Barker](#), 2001 WY 2, 15 P.3d 734 (Wyo. 2001).

- ² Contempo Design, Inc. v. Chicago and N.E. Ill. Dist. Council of Carpenters, 226 F.3d 535 (7th Cir. 2000); Clark v. Riverview Fire Protection Dist., 354 F.3d 752 (8th Cir. 2004) (applying Missouri law); In re Laudani, 401 B.R. 9 (Bankr. D. Mass. 2009) (applying Massachusetts law); Vail/Arrowhead, Inc. v. District Court for the Fifth Judicial Dist., Eagle County, 954 P.2d 608 (Colo. 1998); Rubin v. Laser, 301 Ill. App. 3d 60, 234 Ill. Dec. 592, 703 N.E.2d 453 (1st Dist. 1998); Robert's Hair Designers, Inc. v. Pearson, 780 N.E.2d 858 (Ind. Ct. App. 2002); In re Marriage of Spiegel, 553 N.W.2d 309 (Iowa 1996); Monterrey Center, LLC v. Education Partners, Inc., 5 So. 3d 225 (La. Ct. App. 1st Cir. 2008); Cabot Corp. v. AVX Corp., 448 Mass. 629, 863 N.E.2d 503 (2007); Richards v. Allianz Life Ins. Co. of North America, 133 N.M. 30, 59 P.3d 1262 (2002); Blumenthal v. Tener, 227 A.D.2d 183, 642 N.Y.S.2d 26 (1st Dep't 1996); Gainey v. Gainey, 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009); In re Adoption of B.T.D., 2003 UT App 99, 68 P.3d 1021 (Utah Ct. App. 2003).
- ³ §§ 29 to 31.
- ⁴ Glenney v. Crane, 352 S.W.2d 773 (Tex. Civ. App. Houston 1961), writ refused n.r.e., (May 16, 1972).
- ⁵ Restatement Second, Contracts § 174.
- ⁶ Am. Jur. 2d, Contracts § 218.
As to pleading duress, see § 32.
- ⁷ Am. Jur. 2d, Cancellation of Instruments §§ 22 to 24.
- ⁸ Am. Jur. 2d, Compromise and Settlement §§ 34, 35.
- ⁹ Am. Jur. 2d, Restitution and Implied Contracts §§ 97 to 106.
- ¹⁰ Hochman v. Zigler's Inc., 139 N.J. Eq. 139, 50 A.2d 97 (Ch. 1946).
- ¹¹ Ramirez v. Smart Corp., 371 Ill. App. 3d 797, 309 Ill. Dec. 168, 863 N.E.2d 800 (3d Dist. 2007).